upon A. B. & A.'s $30,000,000 par value stock (R. 30; Ex-R. 164), nor was any interest paid after 1922 on its bonds (R. 30, Ex-R. 43–44, 49). Separate bondholders' committees were organized in 1921 for the two bond issues (R. 30; Ex-R. 164).

Following the organization of these committees, numerous unsuccessful efforts were made to dispose of the properties, and the committees considered various proposals, including the possible scrapping of the road (R. 31, 284–285, 359–360; Ex-R. 165–167). The inherent weakness of the road was lack of traffic; there was little promise of future earnings; and it was clear that the road could not be successfully operated as an independent property (R. 31, 284–286; Ex-R. 178, 179). Finally, the Atlantic Coast Line Railroad (hereinafter called Coast Line) became interested in the property, and on February 23, 1926, it entered into an agreement with the bondholders' committees for a reorganization of the road and the vesting of control thereof in Coast Line (R. 31–33, 73–83).

The agreement provided for the organization of a new company to acquire title to the property at foreclosure sale (R. 75). The new company was to issue 150,000 shares no-par common stock (to be acquired by Coast Line), and $5,200,000 par value, 5% cumulative, redeemable stock, preferred both as to dividends and distribution of assets and guaranteed in both respects by Coast Line (R. 75–76). The preferred stock was to have no voting rights

except on default in dividends (R. 75–76). The holders of both classes of bonds of A. B. & A. (of which $8,600,000 were outstanding, Ex–R. 174), were to be entitled to receive $60 preferred stock for each $100 principal amount of bonds deposited under the plan of reorganization (R. 79). No provision was made for the A. B. & A. stockholders. Coast Line agreed to provide cash (then estimated at $3,677,500.00) for retiring receivership and other obligations prior to the bonds; to furnish the reorganization committee with funds necessary to qualify the bidders at the foreclosure sale; to reimburse the committees for payments made on account of purchase price; and to pay the distributive shares of nonassenting bondholders, Coast Line to receive the preferred stock to which the latter would have been entitled had they assented (R. 78–80, 77). The committees agreed that upon promulgation of the plan they would endeavor to cause the properties to be acquired by the new company by bidding up to $4,500,000 in addition to the obligations prior to the bonds, but not in excess of that amount unless specifically directed by Coast Line (R. 77). The prior obligations were to be paid by Coast Line upon the acquisition of the properties by the new company, except that such of these priorities as were unmatured might be assumed by the new company, in which event Coast Line would provide the new company with the cash necessary to pay them

at maturity (R. 79–80). *It was agreed that Coast Line "shall be entitled to receive the entire issue of 150,000 shares of common stock of the New Company in exchange for the cash which [it] shall provide hereunder"* (R. 79).

Upon the execution of this agreement the bondholders' committees promulgated the plan to the bondholders (R. 31, 83–110), stating that "due to the insufficient earnings of the properties, it has not been feasible to work out a plan for the independent reorganization of the properties that could be financed" and that "no proposition has been received by the committees that seemed as satisfactory as the one contained in said agreement" (R. 84–85). All but $64,300 of the bonds were ultimately deposited under the plan (R. 31, 246).

On April 30, 1926, a decree was entered for the foreclosure and sale of the properties (Ex–R. 30), fixing an upset price of $2,500,000 (Ex–R. 55) and directing that the properties were to be sold subject to the obligations prior to the bonds and were subject to be retaken and sold in default of payment of such obligations (Ex–R. 61–63). The court approved the plan of reorganization on May 15, 1926 (Ex–R. 80–82), and on June 22, 1926, the properties were sold at the foreclosure sale for $4,500,000 to representatives of the reorganization committee who were the only bidders (R. 34, Ex–R. 137). The sale was conditioned upon the granting by the Interstate Commerce Commission of the authority

necessary to consummate the plan of reorganization (R. 34, Ex–R. 139–145).

The reorganization committee had previously made application to the Interstate Commerce Commission on behalf of the proposed new company for a certificate of public convenience and necessity and for authority to issue the preferred and common stock (Ex.–R. 223), and Coast Line had made application for authority to acquire control of the new company by purchase of all of its common stock and to assume the guarantees with respect to the preferred stock (R. 149). On October 26, 1926, after holding a hearing [1] upon the plan of reorganization, the Commission granted the certificate of convenience and necessity, but deferred action upon the application to issue stock and upon Coast Line's application until the new company should be organized (117 I. C. C. 181). In its report the Commission stated (117 I. C. C. 181, 187):

> The statement of the investment accounts of the new company has not received consideration by the applicants, but they indicate their willingness to submit to such reasonable restriction as we may prescribe.

A copy of the report and order of the Commission was filed with the District Court and, on No-

[1] A witness for the plan in explaining it at the hearing before the Commission stated that it contemplated the sale of the common stock to "the Coast Line for the money that is required to lift the receivership" (Ex–R. 169).

vember 16, 1926, pursuant to direction of the court, the properties were conveyed, subject to the priorities, to the representatives of the reorganization committee (R. 8–9, 34–35, 256; Ex–R. 151). Appellant was thereupon incorporated under the laws of Georgia (R. 9), and on November 25, 1926, it made application to the Commission for authority to issue the preferred and common stock, adopting as its own the application previously filed by the reorganization committee (R. 110–112).

On December 21, 1926, the Commission issued a report and order granting appellant authority to issue the stock and authorizing Coast Line to acquire control of appellant by the purchase of the common stock and to assume the guarantees as to the preferred stock (117 I. C. C. 439). That portion of the order authorizing the issuance of stock contained the following condition (117 I. C. C. 439, 443):

> *Provided, however,* and authority to issue said stock is granted upon the express condition, that, for the purposes of the accounting, as provided in the classification of investment in road and equipment in the text of account 41, "Cost of road purchased", the cash value of the preferred stock issued must, in stating the transactions in the accounts, be reckoned on a basis not in excess of its par value; and that the cash value of the common stock issued must be reckoned on a basis not in excess of the amount received therefor.

In its report the Commission stated, among other things, that "subject to this condition, we find that the proposed issuance of securities and assumption of obligation and liability * * * are * * * compatible with the public interest" (117 I. C. C. 439, 442). The Commission's "Classification of Investment in Road and Equipment of Steam Roads",[3] July 1, 1914 (Ex-R. 407), which are part of the general accounting rules promulgated by the Commission pursuant to Sec. 20 of the Interstate Commerce Act, contains the following requirements

---

[3] The pertinent general instructions contained in this classification are:

1. *Accounts for investment in road and equipment.*—The accounts prescribed in this classification are designed to show the investment of the carrier in property devoted to transportation service * * *. *The carrier* means the accounting carrier, except when otherwise specifically indicated. * * * (Ex-R. 415.)

2. *Items to be charged.*—To these accounts shall be charged the cost of original road, original equipment, etc. * * * *Costs.*—Shall be actual money costs to the carrier * * * (Ex-R. 415–416).

3. *Basis of charges.*—The charges to the accounts of this classification shall be based upon the cost of the property acquired. When the consideration given for the purchase or the improvement of property the cost of which is chargeable to the accounts of this classification is other than money, the money value of the consideration at the time of the transaction shall be charged to these accounts, and the actual consideration shall be described in the record in sufficient detail to identify it. The carrier shall be prepared to furnish the Commission, upon demand, the particulars of its determination of the actual cash value of the consideration, if other than money (Ex-R. 416–417).

as to Account 41, "Cost of Road Purchased" (Ex-R. 435):

> This account shall include the cash cost of any road or portion thereof purchased. Where the contract of purchase includes not only road, but also equipment, securities, and other assets, the appraised value of such equipment, securities, and other assets shall be deducted from the total cash cost, and the remainder of the cash cost shall be charged to this account. *Where the consideration given for the property purchased is other than cash, such consideration shall be valued on a current cash basis.* (Italics supplied.)

The Commission's "Classification of Income, Profit and Loss, and General Balance Sheet Accounts", July 1, 1914, as amended August 19, 1921 (Ex.-R. 339), contains the following rules regarding balance sheet entries:

> 701. *Investment in road and equipment.*—This account shall include the accounting company's investment in road and equipment (including that held under contract for purchase) in existence at the date of the balance sheet (Ex.-R. 381).
>
> 751. *Stock.*—This account shall include the total value as herein provided of certificates or receipts issued to represent permanent interests in the accounting company * * *.
>
> When such certificates or receipts have a par value they shall be included in this account at par value.

> When such certificates or receipts have no par value they shall be included in this account at the amount corresponding to the cash received, or the cash equivalent if the consideration is other than cash. * * * (Ex.–R. 403).

Following the entry of the Commission's order of December 21, 1926, the appellant, by deed dated January 1, 1927, acquired title to the railroad properties from the reorganization committee, subject "to such of the encumbrances, liens, conditions, terms and provisions subject to which the said property and assets were conveyed to the Purchasers, as have not heretofore been discharged, satisfied, performed, released or otherwise complied with and/or removed" (R. 335). On January 4, 1927, appellant issued $5,180,344.07 preferred stock to the reorganization committee for distribution to the A. B. & A. bondholders in accordance with the plan of reorganization (R. 36, 307) and issued and delivered to Coast Line the [illegible]000 shares of no-par common stock (R. 36, 257, 307). On this date, Coast Line discharged $2,889,153.33[4] of obligations prior to the A. B. & A. bonds, as-

[4] Prior to January 4, 1927, Coast Line had purchased prior obligations aggregating $1,565,742.45 and on January 4 it discharged these priorities by delivering the evidences of indebtedness (notes and collateral) to the receiver and at the same time it also gave the receiver a check for $1,323,410.88 in payment of other priorities (R. 35, 257–259, 264–265, 310A, 310B). Thus, on January 4, 1927, Coast Line discharged $2,889,153.33 in prior obligations.

suming any additional obligations which might thereafter become due (R. 35, 257–259, 264–265, 310A, 310B), and the receiver thereupon surrendered possession of the properties to appellant (R. 37, 258). Pursuant to Section 20a (5) of the Interstate Commerce Act, appellant filed with the Commission, on January 17, 1927, a certificate of notification of securities sold, in which it stated that it had sold to Coast Line the 150,000 shares of no-par common stock, tentatively valued at $4,080,699.80, for the payment by Coast Line of obligations listed in that amount, consisting of the prior obligations which Coast Line had theretofore discharged plus the estimated amount of such obligations yet to be paid (R. 36–37, 146–148).[1]

On January 27, 1927, the appellant's auditor, by letter to the Commission's Bureau of Accounts, stated that appellant desired to set up its investment upon the basis of the cost of reproduction at June 30, 1914, as determined by the Commission in its valuation pursuant to Section 19a of the Interstate Commerce Act (R. 200–201; see 75 I. C. C. 645). Quoting the condition in the order of December 21, 1926, he stated that he understood it to mean that the value of the stock "could not be included in the investment account in excess of some nine or ten million dollars" and requested permission to carry the difference between that

[1] The total amount ultimately paid by Coast Line was $4,248,413.76 (R. 38).

amount and the 1914 valuation to profit and loss or to a suspense account (R. 201). By letter of February 15, 1927, the Bureau of Accounts replied that under the classifications of the Commission the investment account must be stated on the basis of cost and not value and advised that the condition of the December 21, 1926 order must be adhered to literally (R. 201–202). Nevertheless, on June 20, 1927, appellant submitted to the Bureau of Accounts a proposed balance sheet as of January 1, 1927 (R. 39, 117, 121–124), setting up the account "Investment in Road and Equipment" at $29,471,859 (the 1914 reproduction cost new valuation adjusted for subsequent additions and retirements) and showing a liability for no-par common stock of $24,553,567.55[6] (R. 39–40, 122, 125–130). This balance sheet was submitted on the theory that the "amount received" by appellant for the issuance of its common stock was the value of the net assets of the predecessor company less the par value of the preferred stock[7] (R. 122).

---

[6] This latter amount is a balancing entry derived by deducting the preferred stock at par from the sum of the road and equipment account plus the other net assets.

[7] The accountant's report, which accompanied the proposed balance sheet, stated that the amount thus determined for the common stock was "the amount received therefor" within the meaning of the condition of the December 21, 1926 order rather than the cash expended by Coast Line, because no part of such cash had been paid to appellant, but conceded that the condition was "susceptible of different interpretations" (R. 122–123).

The Commission's Bureau of Accounts by letter of August 3, 1927, rejected the proposed balance sheet because based upon a valuation of the properties instead of cost (R. 131). It stated that the common stock had been issued to Coast Line in consideration for the discharge by the latter company of the prior obligations, that the payment thereof directly benefited appellant, even though no cash was paid to it, and that consequently the amount of such obligations, then tentatively estimated at $4,080,699.80,* was "the amount received" for, and "the cash value of", the no-par common stock within the condition of the December 21, 1926 order (R. 131–132). The appellant was accordingly directed to reduce its liability for no-par common stock to that amount and to so reduce its "Investment in Road and Equipment" as to show aggregate net assets of approximately $9,261,000 (that is, the par value of the preferred stock plus said sum of $4,080,699.80 taken as the measure of the cash value of the common stock) (R. 40, 131–132).

The appellant thereupon filed a supplemental application with the Commission (R. 113) for such a construction of the order of December 21, 1926, as would permit the accounting which the Commission's Bureau of Accounts had rejected, and for a

* In its certificate of notification to the Commission, dated January 10, 1927, appellant had assigned this amount as the tentative value of the no-par common stock which appellant stated it had sold to Coast Line for the payment of the obligations prior to the bonds of the old company, *supra*, p. 14.

hearing thereon. The Commission denied this application, without hearing, by order of April 9, 1928. (See 158 I. C. C. 6, 7.) On June 14, 1928, appellant filed suit in the court below, asking that the April 9, 1928, order be set aside and that an order be issued authorizing it to make the entries which it had submitted to the Bureau of Accounts (Ex.–R. 1–16, 18). The court on November 2, 1928, set aside the order and directed that the appellant's application "stand for further hearing before said commission" (Ex.–R. 222–223). *Atlanta, B. & C. R. Co.* v. *United States*, 28 F. (2d) 885. The court held in effect that the Commission should have allowed a hearing as requested.[9]

The Commission thereupon reopened the proceeding and held a hearing at which appellant submitted a balance sheet as of January 1, 1927, based upon the Commission's 1914 valuation for rate-making purposes of the A. B. & A. properties (adjusted for additions and betterments to date), and showing an investment in road and equipment of $24,481,893.86 and a capital stock liability of slightly over $27,000,000 (R. 29; 158 I. C. C. 6, 8). On October 9, 1929, the Commission rendered a *report*

[9] In the second opinion of the court, presently referred to, its action with respect to the April 9, 1928, order was described as follows: "At that time an order of the Interstate Commerce Commission, made upon a supplemental application of the Coast Company for interpretation of a formal order, dated December 21, 1926, touching the accounts of the company, was set aside because granted without a hearing." *Atlanta, B. & C. R. Co.* v. *United States*, 37 F. (2d) 401.

(but no order) which considered the proposed accounting entries, the Commission's accounting rules, and the December 21, 1926 proviso, and concluded that the investment in road and equipment may not be stated at an amount in excess of $9,261,043.87—the sum of the preferred stock at par and the cash value of the common stock measured by the amount expended by Coast Line to discharge the obligations prior in lien to the A. B. & A. bonds (R. 29; 158 I. C. C. 6). Appellant then filed a supplemental petition in the court below which, treating this report as an order, set it aside by a decree of January 18, 1930 (R. 30, Ex–R. 503). *Atlanta, B. & C. R. Co.* v. *United States,* 37 F. (2d) 401. That decree was reversed by this Court for lack of jurisdiction of the District Court because of the absence of any order by the Commission. *United States* v. *Atlanta, B. & C. R. Co.,* 282 U. S. 522.

Thereafter, on March 26, 1932, the Commission initiated an inquiry and investigation concerning the methods employed by the appellant in accounting for its liability for capital stock and for its investment in road and equipment [10] (R. 28, 30, 156–157). A hearing was held before the Commission on June 10, June 11, June 29, July 12, July 13, and

[10] This proceeding also embraced an investigation of Coast Line's accounting for its investment in the capital stock of the appellant, but Coast Line complied with the Commission's requirements and no order was issued against it (R. 53, 61).

July 25 (R. 156, 188, 207, 235, 265, 305), at which evidence was introduced both by the appellant and the Commission's Bureau of Accounts. Briefs were filed (R. 30), and the case was orally argued (R. 28). The evidence presented at the hearing included testimony both on behalf of the Commission and the appellant respecting the value of appellant's railroad properties as of January 1, 1927 (R. 42–48, *infra*, pp. 46–50). Appellant submitted a proposed balance sheet, again based upon the 1914 valuation for rate-making purposes, in which it showed an investment in road and equipment of $24,010,135.47 and a liability for common stock of $21,528,653.20 (R. 40–41, 327–328).

On July 9, 1934, the Commission rendered the report and order now under attack (R. 27, 61). In its report the Commission, after describing the prior proceedings before it and in the court below and after summarizing the evidence bearing on the value of the railroad properties, made findings (among others) which may be summarized as follows:

(1) *Cash equivalent of consideration received by appellant for common stock.*—The consideration received by appellant for its no-par common stock was the discharge by Coast Line of liens, subject to which appellant acquired its properties, amounting to $4,248,413.76; this amount was the cash equivalent of that consideration; and the Commission's accounting rules applicable to "Capital

Stock" (*supra*, pp. 12–13) required that appellant's entry for liability for no-par common stock should not exceed that amount (R. 55).

(2) *Current cash value of consideration paid by appellant for road.*—The current cash value of the consideration moving from appellant in the acquisition of its properties did not exceed $9,428,713.76 (the sum of the preferred stock at par and the cash value of the common stock measured by the amounts paid by Coast Line in discharging the prior liens), and the Commission's accounting rules applicable to "Cost of Road purchased" (*supra*, p. 12) required that appellant's net assets, including road and equipment, should not be recorded in its accounts in excess of that amount (R. 55).

(3) *"Amount received" under Commission's condition for common stock.*—The "amount received" by appellant for its no-par common stock was the discharge by Coast Line of prior liens aggregating $4,248,413.76, and the terms of the condition in the December 21, 1926, order required that that sum plus the preferred stock at par, or $9,428,713.76, was the maximum amount which appellant might record in its accounts for its investment in road and equipment and the net amount of other assets and liabilities (R. 56).

(4) *Determination of cash value upon the evidence.*—The market or fair cash value of the properties acquired by appellant did not exceed the sum of $9,428,713,76 on January 1, 1927 (R. 60).

The order required appellant to eliminate from the account "Capital Stock" all liability for no-par common stock in excess of $4,248,413.76 and to state the balance in the account "Investment in Road and Equipment" in conformity with this requirement as to "Capital Stock" and with the Commission's accounting rules applicable to "Cost of Road Purchased" (R. 61).

On August 30, 1934, appellant filed its bill in the court below seeking to enjoin and annul this order (R. 1). The Interstate Commerce Commission intervened (R. 62), and answers were filed by the Commission (R. 62) and the United States (R. 69). The District Court, on December 14, 1934, entered a decree dismissing the bill of complaint (R. 339). The District Court restated the views expressed in its earlier opinions that the appellant "paid for the railroad its entire capital stock, and received for its common stock the value of the railroad less the par of the preferred stock" and that the application of the Commission's accounting rules and the condition in the December 21, 1926, order made it "necessary to value the property received and to subtract the par of the preferred stock in order to find what was received for the common stock" (R. 340). The court, however, found it "unnecessary to reassert" these views and sustained the order of the Commission upon the ground that the Commission had, in conformity with the view of the court, made a finding as to the value of the railroad prop-

erties, which was arrived at without "any breach of law" and which supported the accounting prescribed by the order (R. 340). This appeal followed.

SUMMARY OF ARGUMENT

I

The Commission attached the condition to its order granting appellant authority to issue stock pursuant to the plan of reorganization, for the purpose of securing compliance with its accounting rule requiring a road purchased to be stated in the accounts at "cash cost", because in its view, without such a condition the issuance of the stock would not be compatible with the public interest. See *Atlantic Coast Line R. Co.* v. *United States*, 284 U. S. 288, 295.

Appellant did not (and does not now) attack the order authorizing the issuance of stock, as imposing a condition beyond the Commission's authority. Instead, it acted under the authority conferred in the order and issued the stock. Having accepted the benefits of the order, appellant now contends that the condition has a different meaning than that given to it by the Commission. The courts should manifestly exercise great caution in entertaining a suit attacking the Commission's construction of a condition after all of the benefits conferred by the order have been accepted. For, if the courts place a different construction upon the condition than that intended by the Commission, they are in effect

giving approval to transactions different from those which the Commission has, within the discretion conferred upon it by statute, found to be in the public interest. In short, judicial sanction would be given to transactions not preceded by the Commission's finding of public interest and hence prohibited by the Interstate Commerce Act.

It is clear that when the Commission imposed the condition it intended it to mean what the Commission has held in the present proceeding. Not only is there lack of any showing that appellant issued the stock in ignorance of the meaning intended by the Commission in imposing the condition; on the contrary, the record affirmatively establishes that appellant is chargeable with knowledge that the Commission so construed the condition. Under such circumstances, appellant clearly had no standing in this suit to object to an order of the Commission requiring appellant to comply with the provision of the condition as thus construed by the Commission.

II

The present order of the Commission is based upon a correct construction of the conditioned order; it is also independently based upon a correct construction of the applicable accounting rules. The Commission's pertinent accounting rule requires that a road purchased shall be stated at "cash cost" and that "where the consideration given for the property purchased is other than

cash, such consideration shall be valued on a current cash basis." By the condition the Commission required that for the purposes of the accounting in accordance with this rule the "cash value" of the preferred stock should be reckoned as not in excess of its par value and the "cash value" of the common stock should be reckoned on a basis not in excess of "the *amount* received therefor." Appellant makes no claim that the Commission was in error in requiring that the preferred stock be valued only at par for the purposes of determining the cash cost of the road. The controversy is only with respect to the common stock.

Under the condition the common stock is required to be valued at "the amount received therefor", and the dispute is as to the proper construction of these words. The Commission has held that the "amount received" for the common stock was the amount paid by Coast Line in discharging receivership and other prior obligations. Under the reorganization agreement entered into between Coast Line and the committees for the bondholders of the old company, pursuant to which agreement the road was reorganized and title thereto was acquired by appellant, Coast Line agreed to pay such prior obligations as consideration for the issuance to it of appellant's common stock. Appellant insists, however, that it did not receive any consideration from Coast Line for the issuance of its common stock but that, instead, it issued both the preferred and common stock to the reorganization

committee in consideration for the transfer by that committee to appellant of unencumbered title to the road and that the reorganization committee (not appellant) sold the common stock to Coast Line in consideration for the payment of the prior obligations. Thus, the entire controversy as to the meaning of the words "amount received therefor" arises from two conflicting views as to the precise method by which the reorganization was consummated.

It is submitted, first, that it is immaterial which view of the reorganization is the correct one. For, the language of the condition should be construed in its context; that is to say, in the light of the proceedings before the Commission which led to the conditioned order and the report which accompanied that order. Thus considered, it is plain that the Commission in using the words "amount received therefor" had reference to the amounts paid by Coast Line in discharging the prior obligations. Secondly, the Commission's view of the reorganization was correct. Appellant acquired only encumbered (not unencumbered) title from the reorganization committee, and it issued its common stock not to the reorganization committee but to Coast Line. Under the reorganization agreement appellant was obligated to issue to Coast Line, and Coast Line was entitled to receive, all of the common stock as consideration for the payment of the prior obligations and it was only by issuing the common stock to Coast Line that ap-

pellant was entitled to, and did, acquire unencumbered title to the road. The present order of the Commission is therefore based upon a proper construction of the condition in its prior order.

Furthermore, even if the Commission had not attached the condition in question to its prior order, the present action of the Commission would have ample support as an application and construction of the Commission's accounting rules. Under the accounting rules appellant was required to state its investment in the road at "cash cost" and since the consideration given for the road was other than cash it was necessary, under the accounting rules, to determine the cash value of the consideration, namely, the preferred and common stock. If, as the Commission views the reorganization, the common stock was sold by appellant to Coast Line in consideration for the payment of the prior obligations, then manifestly the cash value of the common stock is the amount of these obligations. And even assuming, as appellant contends, that Coast Line acquired the common stock not from appellant but from the reorganization committee, then it was clearly proper for the Commission to fix as the cash value of that stock the amount contemporaneously paid for it by Coast Line.

III

The Commission's order has ample support in the record even on appellant's view that it is entitled to record its investment in the road at its value. Even

on appellant's construction of the condition and of the accounting rules appellant is entitled to record only the fair exchange or market value of the road. Such a valuation has little, if any, relationship to the Commission's valuation for rate-making purposes under Section 19a of the Interstate Commerce Act. To give the 19a valuation the weight demanded by appellant in establishing the fair market value of the road where, as here, the evidence establishes that the road could not have been sold at anything near its 19a valuation is to give practically conclusive effect to the 19a valuation.

The Commission has found that the fair market value of the road did not exceed the par value of the preferred stock plus the cash paid by Coast Line in discharging receivership and other prior obligations. These two amounts represent the total investment made in the reorganized road. The Commission's finding that the fair market value of the road did not exceed the sum of these amounts is supported by substantial evidence.

ARGUMENT

I

APPELLANT HAS NO STANDING TO OBJECT TO THE COMMISSION'S CONSTRUCTION OF THE CONDITION

While appellees contend (1) that the accounting prescribed by the Commission is amply supported, as the court below held, by the Commission's finding as to the fair cash value of the railroad properties acquired by appellant (*infra*, pp. 43–51), and

(2) that contrary to the view of the court below, the Commission correctly construed its accounting rules and the condition in its prior order as not requiring such a valuation to be made (*infra*, pp. 34–43), appellee's first contention is that neither of these issues need have been decided by the court, but that, under the circumstances of this case, appellant should have been held to be conclusively bound by the Commission's construction of the condition in its prior order.

Appellant does not dispute the Commission's power to attach a condition, prescribing a particular method of accounting, to an order, such as that here involved, authorizing the issuance of stock. Section 20a (3) of the Interstate Commerce Act expressly authorizes the Commission to grant applications to issue stock "upon such terms and conditions as" it "may deem necessary or appropriate in the premises" (Appendix, *infra*, p. 57). And the Commission is empowered by Section 20 of the Act (Appendix, *infra*, pp. 54–55) to prescribe the system, manner, and form of carriers' accounts.

When the Commission attaches a condition to an order, as in the present case, it does so because, in the Commission's judgment, without such a condition the authority requested would not be in the public interest. The peculiar importance of a condition was stated by this Court in *Atlantic Coast Line R. Co.* v. *United States*, 284 U. S. 288, as follows (p. 295):

> In effect, the Commission found that without such a condition the proposed lease was not in the public interest. With that condition it was.

The Commission is prohibited by Section 20a (2) of the Interstate Commerce Act from granting authority to issue stock unless it finds that it is "compatible with the public interest" (Appendix, *infra*, p. 56). In the report which accompanied the order granting appellant conditional authority to issue stock, the Commission stated (117 I. C. C. 439, 442):

> *Subject to this condition,* we find that the proposed issuance of securities and assumption of obligation and liability * * * are compatible with the public interest * * *. (Italics supplied.)

Presumably, the Commission would not have authorized the issuance of stock, thereby enabling appellant to acquire the railroad pursuant to the plan of reorganization, unless it imposed this condition, obviously designed to eliminate watered values and overcapitalization in the road's financial structure. And no condition could be more appropriate for achieving such a purpose than that here imposed, limiting the amount which appellant's balance sheet could show for the properties acquired to the par value of its preferred stock plus (as the Commission construes the condition) the amount of prior obligations discharged by Coast Line in consideration for the issuance to it of appellant's no-par common stock.

Manifestly, the courts should exercise extreme care in reviewing the Commission's construction of a condition where, as here, the authority conferred by the order to which the condition is attached has been exercised and the acts permitted by the order have been fully accomplished. Even assuming it to be the case (which we deny) that the language of the condition is susceptible of the construction [11] for which appellant contends, it is, nevertheless, clear that the Commission, in imposing the condition, intended it to operate in the manner which it has prescribed by the present order, and we do not understand appellant to contend otherwise. Nor has appellant made any showing that it did not understand, when the order was issued, that the Commission so construed the condition. Appellant, by contending for its own construction, seeks in effect to emasculate the condition. If it disputed (as it has not) the Commission's power to impose such a condition, it was open to appellant to contest the order by which it was authorized to issue the stock. See *Chicago Junction Case,* 264 U. S. 258, 263; *Venner* v. *Michigan Central Railroad,* 271 U. S. 127, 131. Instead,

[11] Certainly, the condition is susceptible of the construction made by the Commission. When the appellant first advanced its construction (June 20, 1927), it submitted a proposed balance sheet to the Commission accompanied by a report, prepared by a firm of accountants, in which it was conceded that the condition was "susceptible of different interpretations" (R. 122; *supra*, p. 15).

it acted under the authority conferred, by issuing the stock and thereby acquiring title to the railroad properties.

For a court to place a different construction upon a condition than that intended by the Commission, after the transactions authorized have been executed, amounts, in effect, to the court's giving approval to transactions different from those which the Commission has, within the discretion conferred upon it by statute, found to be in the public interest. In short, judicial sanction would be given to transactions not preceded by the Commission's finding of public interest and hence prohibited by the Interstate Commerce Act. Obviously, the courts should not permit such a result, unless otherwise palpable injustice will be done. We think it clear that there can be no palpable injustice where, as here, no showing has been made that appellant acted in ignorance of the construction which the Commission placed upon the condition. It does not lie in appellant's mouth to complain of alleged ambiguities of language where it does not appear that the meaning intended by the Commission was not made clear to appellant.

Not only is there lack of proof in this case that appellant was not apprised of the purpose of the condition, but the record amply establishes the contrary. It is clear that appellant understood that the Commission viewed the reorganization as pro-

viding for the sale by appellant to Coast Line of the no-par common stock, in payment for which Coast Line would advance the cash necessary to pay off the prior obligations, and thereby enable appellant to acquire unencumbered title to the railroad. The Commission so stated in the report which accompanied the conditioned order (117 I. C. C. 439, 440):

> Authority is also sought to issue 150,000 shares of common stock without nominal or par value. This stock is to be issued to the Atlantic Coast Line Railroad Company in consideration of advances in cash by that company to meet certain outstanding obligations of the receiver and various expenses in connection with the foreclosure and reorganization of the old company, estimated to amount to about $3,677,500.

The condition provided that the "cash value of the common stock issued must be reckoned on a basis not in excess of the amount received therefor." Whatever interpretation appellant now gives to the words "amount received therefor", the Commission's report made it clear, and appellant must have known, that the Commission was referring to the amount advanced by Coast Line to pay off the prior obligations. It is difficult to conceive what other amount could have been intended. Moreover, appellant's certificate of notification, dated January 10, 1927, only six days after the stock was issued to Coast Line and the railroad was turned over to appellant, specifically stated that appellant had sold

the common stock to Coast Line, tentatively valued at $4,080,699.80, for the payment by Coast Line of the prior obligations in that amount (R. 146–147, *supra*, p. 14). Shortly thereafter (January 27, 1927), appellant's auditor stated to the Commission that he understood the condition to mean "that the value of the stock issued could not be included in the investment account in excess of some nine or ten million dollars" (i. e., the preferred stock at par plus the amounts paid by Coast Line).[12] (R. 201, *supra*, pp. 14–15.)

In short, it is plain that the construction for which appellant contends was an afterthought, apparently suggested to it by a firm of accountants months after the stock was issued and the road was acquired (R. 121), and that appellant at the time it issued its stock was fully aware of the construc-

[12]Additional evidence of appellant's knowledge is the following: In the application which the reorganization committee filed with the Commission (Ex–R. 223), on behalf of the proposed new company, and which the appellant adopted as its own in its application for authority to issue stock (R. 110), it was stated (Ex–R. 227):

> The cash requirements of the plan are to be provided by the Coast Line, and the Coast Line is to receive the entire issue of 150,000 shares without par value of the common stock of the applicant.

See also statements made by counsel for the proponents of the plan (the reorganization committee and Coast Line) at the hearing before the Commission on their applications (R. 358–367). For example, it was stated:

> The Atlantic Coast Line is going to furnish the Atlanta, Birmingham & Coast with $3,600,000 with which to pay those prior liens * * *. The new company will sell the common stock to the Atlantic

tion which the Commission has consistently placed upon this condition.

It is submitted that, under these circumstances, the appellant was bound by the Commission's construction of the condition, and that the court below should not have entered upon a review of that construction.

II

THE COMMISSION'S ORDER WAS BASED UPON A CORRECT INTERPRETATION OF THE CONDITION IN ITS PRIOR ORDER AND OF ITS APPLICABLE ACCOUNTING RULES

As an application either of the condition of the order of the Commission or of the applicable accounting rules, the order here in question is lawful.

1. *Construction of the condition.*—The condition of the Commission's order of December 21, 1926, provided that, for the purposes of the accounting

---

Coast Line for $3,677,000 plus other charges, whatever they may amount to (R. 366–367).

The Coast Line has to pay up $3,000,000 plus in cash, has to guarantee the new preferred stock and then gets the common stock in the new company * * *. The price payable by the Coast Line is the equivalent of about $8,500,000. It is three million six or seven hundred thousand dollars in cash, and there is a new preferred stock of a par value of about $5,118,000 * * * (R. 359).

Commissioner EASTMAN. How do you arrive at the number of these shares?

Mr. ELLIOTT. In a sense it was expediency. I do not know that any definite or specific calculation has been made. It seems to us relatively a fair proportion. In a sense it was just the proportions between the non-par stock, whatever that stock is, and then the number of shares represent the equity in the property after the $5,200,000 preferred is protected; and if it is only

in accordance with the accounting rules applicable to "Cost of Road Purchased", the "cash value" of the preferred stock should be reckoned as not in excess of its par value and "the cash value of the common stock issued must be reckoned on a

---

$3,670,000 that is to be paid in cash, it would have a value of about $24 a share (R. 364–365).

Commissioner WOODLOCK. I asked Mr. Fowler at what you propose to state the capital account of the new property represented by 150,000 shares of non-par stock.

Mr. ELLIOTT. Do you have in mind, stated in the books of the Atlanta, Birmingham & Coast, or the Coast Line?

Commissioner WOODLOCK. The new company.

Mr. ELLIOTT. I think it would be stated at what the road and equipment account of the A. B. & A. Railway is stated.

Commissioner EASTMAN. That is not the present rule. The present rule is that it shall be stated on the balance sheet at the market value of the securities returned to the property at the time they were passed over.

Mr. ELLIOTT. I believe the Commission has under consideration the adjustment of its accounts. Wherever it is to be set up, it will be set up so that you can see what was paid for it and what the original cost was.

Commissioner EASTMAN. That is one suggestion. We have the question under consideration; that is true.

Mr. ELLIOTT. I understand that you have the question under consideration now, and of course, whatever the Commission's decision is we will have to meet it (R. 364).

In the Commission's report, which accompanied the order granting a certificate of convenience and necessity to the reorganization committee on behalf of the proposed new company it was stated (117 I. C. C. 181, 187):

> The statement of the investment accounts of the new company has not received consideration by the applicants, but they indicate their willingness to submit to such reasonable restriction as we may prescribe.

basis not in excess of the amount received therefor." The Commission's accounting rules applicable to "Cost of Road Purchased" (*supra*, p. 12) require that the road purchased shall be stated at "cash cost" and that "where the consideration given for the property purchased is other than cash, such consideration shall be valued on a current cash basis." It is plain that the Commission imposed the condition in order to fix "the current cash basis" [13] upon which the preferred and common stock should be valued for the purpose of determining the amount at which appellant should enter on its balance sheet the "cash cost" of the road, as required by the accounting rule.

Appellant makes no claim that the condition did not permit the Commission to require that the preferred stock should be reflected in the "cash cost" of the road at its par value only. But appellant insists that the "amount received" for the common stock (and consequently the amount to be reflected for the common stock in the "cash cost" of the road) was not the amount paid by Coast Line in discharging prior obligations as consideration for the issuance to it of the common stock, but was, instead, the present market value of the railroad

[13] It is to be noted that the accounting rule respecting capital stock entries provides that stock with a par value shall be stated at par and no-par stock shall be stated "at the amount corresponding to the cash received, or the cash equivalent if the consideration is other than cash" (*supra*, pp. 12–13).

properties (less the par value of the preferred stock). Thus, the absurd result is reached that under a condition designed to exact compliance with an accounting rule requiring a road purchased to be stated in the balance sheet at its "cash cost", the cost to the carrier acquiring the road is asserted to be the *value* of the road acquired. If this is the correct construction of the condition, it is obvious that the condition imposed no real limitation on the authority to issue the stock and failed of its purpose to compel adherence to the accounting rule.

The construction for which appellant contends is based upon the claim that the plan of reorganization consisted of two separate parts: (1) the transfer by the reorganization committee to appellant of unencumbered title to the railroad, in exchange for all of appellant's stock and (2) a separate transaction between the reorganization committee and Coast Line involving the sale by the former to the latter of the common stock, in consideration for the payment by Coast Line of the prior obligations. In the Commission's view, however, it was the *appellant,* and not the reorganization committee, which sold the common stock to Coast Line.

It is submitted that it is entirely immaterial in this case whether the appellant's or the Commission's view of the reorganization is the correct one. The Commission attached the condition and used the words "amount received therefor" in the condition upon *its* view of the reorganization, which

view appears from the report accompanying the conditioned order and the proceedings before the Commission which preceded the report and order. The proponents of the plan had described it to the Commission as involving the sale by *appellant* to Coast Line of the common stock in consideration of the payment of the prior obligations (*supra*, f. n. 12, pp. 33–34). Plainly, the condition is to be construed in the context in which it is found and the circumstances under which it was imposed, and thus construed it is evident that the words "amount received therefor" had reference to the amount paid by Coast Line in discharging the prior obligations.

It is submitted, moreover, that the Commission has correctly viewed the plan of reorganization. The reorganization was effected pursuant to the agreement of February 23, 1926, between the bondholders' committees and Coast Line. It is clear from this agreement that the substance of the reorganization was (1) the acquisition by Coast Line of control of the railroad through a subsidiary (appellant) by payment of the cash required to lift the receivership and (2) the acceptance by the old bondholders of preferred stock of the appellant for the release of the lien of their bonds. Appellant obviously did not act in any independent bargaining capacity in the consummation of the plan. It had no financial means with which to purchase the railroad. It was merely created pursuant to the plan in order that it might acquire unencumbered

title to the railroad and operate it as a subsidiary of Coast Line. The acquisition by the reorganization committee of *encumbered* title to the railroad at the foreclosure sale and the subsequent transfer of such *encumbered* title to appellant were but incidents of the plan. The reorganization committee had no power to convey an *unencumbered* title to appellant, nor did appellant have any means of acquiring an *unencumbered* title, unless it issued its common stock to Coast Line as required by the agreement of February 23, 1926. That agreement gave Coast Line the absolute right to receive from appellant its entire issue of common stock, and only by issuing this stock to Coast Line could appellant acquire unencumbered title to the road. The common stock was in fact issued by appellant *directly* to Coast Line. If, as appellant states, it issued the stock to Coast Line, at the direction of the reorganization committee, "such direction was not only superfluous but wholly gratuitous" (R. 55). To hold that the appellant was a "purchaser" of the railroad from the reorganization committee and that the reorganization committee was a "seller" of the common stock to Coast Line is to disregard entirely the agreement of February 23, 1926, and the substance and purpose of the reorganization. Had Coast Line paid the funds necessary to lift the receivership over to appellant for payment by it of the prior obligations, it would be obvious that these funds would consti-

tute the "amount received" by appellant for its common stock. Coast Line, instead of delivering the cash to appellant, paid off the prior obligations itself. The difference is purely formal. In substance the cash was paid to appellant whether it was physically delivered to appellant or was used for its benefit to pay off the prior obligations thereby enabling it to acquire unencumbered title to the railroad.

Accordingly, if the present order of the Commission is viewed as a construction and application of the condition in its prior order, the action of the Commission was entirely lawful.

2. *Construction of the accounting rules.*—We think that the order of the Commission is equally unassailable when viewed as an application of the Commission's accounting rules. As stated, these rules require that a road purchased should be entered on the balance sheet at "cash cost" and that the consideration given for the road, if other than cash, shall be valued on a "current cash basis."

Where, as here, a corporation is created under a plan of reorganization to acquire a railroad and to issue the securities required by the plan, the "cash cost" of the road to that corporation cannot be differentiated from the investment made by those receiving the new securities. The consideration given for the road is paid by the old bondholders who, in substance, make a new investment in the road by accepting the new securities (in this case, preferred stock) in exchange for their old

bonds, and by those who furnish the new cash (Coast Line). In this case, therefore, the consideration given for the road is measured by the par value of the preferred stock plus the cash paid by Coast Line in order to lift the receivership, and the sum of these amounts constitutes the "cash cost" to appellant of the road within any reasonable construction of the accounting rule as applied to this situation.

Even on appellant's view that it acquired unencumbered title to the road from the reorganization committee by paying to the committee all of its capital stock, it would be necessary under the accounting rule to value that consideration (i. e., the capital stock) on a "current cash basis" in order to determine the "cash cost" of the road. Appellant does not deny that the "cash basis" for the preferred stock is its par value. The common stock, being without par value, is required to be entered in the balance sheet "at the amount corresponding to the cash received, or the cash equivalent if the consideration is other than cash" (*supra*, p. 13). If, as appellees contend, the Commission was correct in viewing the transaction as a sale by appellant to Coast Line of the common stock in consideration for the payment by Coast Line of prior obligations, then "the cash equivalent", and also the "current cash basis" for valuing the common stock, was manifestly the amount paid by Coast Line. And even if, as appellants contend, the transaction should be viewed as a sale of the com-

mon stock by the reorganization committee and not the appellant, it was clearly proper for the Commission to fix, as the "cash equivalent" of the common stock and the "current cash basis" for valuing it, "the amount contemporaneously paid and agreed to be paid for it by the Coast Line Company" (R. 54).

In cases involving the validity of the accounting rules of the Commission, this Court has stated that an attack upon such rules "must be, rested at bottom upon the contention that the regulations * * * are so entirely at odds with fundamental principles of correct accounting as intrinsically to manifest an abuse of power" (*Kansas City So. Ry.* v. *United States,* 231 U. S. 423, 444); that the "courts ought not to be called upon to interfere with or correct alleged errors with respect to accounting practice" and that even if the Court is "in disagreement with the Commission as to the wisdom and propriety of the order" it is "without power to usurp its discretion and substitute" the discretion of the Court (*Norfolk & Western Ry. Co.* v. *United States,* 287 U. S. 134, 141). It is submitted that these principles are applicable not only where the validity of the accounting rules is in issue but also where, as here, the question is as to the construction of the accounting rules and their application to a particular case. To require that appellant should state the "cash cost" of the railroad in its balance sheet at the sum of the preferred stock at par plus the

amounts paid by Coast Line in order to lift the receivership and to enable appellant to acquire the road pursuant to a plan or reorganization, is clearly not "so entirely at odds with fundamental principles of correct accounting as intrinsically to manifest an abuse of power" and as to require the substitution of the courts' discretion for that of the Commission.

III

THE COMMISSION'S FINDING THAT THE FAIR CASH VALUE OF THE RAILROAD ACQUIRED BY APPELLANT DID NOT EXCEED THE AMOUNT DESIGNATED BY THE COMMISSION IS SUPPORTED BY SUBSTANTIAL EVIDENCE

Appellees do not concede that the value of the road acquired by appellant is material to a determination of the accounting entries which appellant was required to make under the accounting rules of the Commission and the condition in the prior order. Nevertheless, the Commission has carefully considered this matter and has made a valuation of the railroad, presumably in deference to the views expressed by the court below in its earlier opinions, and has found that the fair cash value of the road did not exceed the same amount which the Commission through its construction of the condition and of the accounting rules determined to be the proper basis for the accounting entries. The court below stated that it did not "discover any breach of law in arriving at the value" and sustained the order of the Commission upon that ground (R. 340).

Appellant contends that the Commission should have valued the road on the basis of the Commission's 1914 valuation for rate-making purposes, made pursuant to Section 19a of the Interstate Commerce Act. On this basis appellant would record its investment in road and equipment at approximately $24,000,000 and its liability for no par common stock at approximately $21,500,000. Under the Commission's order, appellant's net assets, including road and equipment, may not be recorded at more than $9,428,713.76 and its liability for no par common stock must be stated at $4,248,413.76.

It is not clear whether appellant contends that the valuation which the Commission was required to make under appellant's construction of the condition and of the accounting rules is the same kind of valuation which is made pursuant to Section 19a of the Interstate Commerce Act (Appellant's Brief, pp. 80–84). Of course, the present proceeding was not a valuation proceeding; it was only a proceeding instituted for the purpose of applying the condition in the prior order and the terms of the accounting rules of the Commission. Under the terms of the condition and of the accounting rules, the only matter for determination of the Commission was the cash cost" of the road, and the cash cost of the road is to be determined under such condition and rules on the basis of the "current cash" value of the consideration given for it, namely, the stock. Appellant's view, however, is

that the stock in turn must be valued on the basis of the properties which appellant acquired in return therefor. But, of course, the only kind of value of such properties material in determining the cash value of the stock is the cash value of such properties. Indeed, the accounting rule applicable to capital stock entries makes it explicit that the only kind of value of the road material here is its cash value, because the rule expressly requires that stock given for other than cash shall be stated at the "cash equivalent" of the consideration received for the stock. Accordingly, the net result of the construction contended for by appellant must be that the "cash cost" of the road is its cash value; that is, its market or exchange value.

While appellant ignores but does not appear to deny that the Commission was required to find only the market or exchange value, appellant contends that by reason of subsection (i) of Section 19a of the Interstate Commerce Act (*infra*, p. 53), the 19a valuation for rate-making purposes is prima facie evidence of the market or exchange value, and that the Commission did not give to it the prima facie effect which that subsection contemplates. In view of the evidence before the Commission establishing that the *sale* or *exchange value* of the road was considerably less than the 19a valuation, it is apparent that appellant seeks to give practically conclusive effect to the 19a valuation.

Either reproduction cost or the sum which the Commission fixes under Section 19a as that on

which the carrier is entitled to earn a fair return manifestly has little relation to the market or exchange value of the properties. (See 75 I. C. C. 645, 665–666.) Indeed, the proponents of the reorganization made this very point in urging to the Commission that the price payable for the road under the plan (then estimated at $8,500,000, but increased to $9,428,713.76 through subsequent payments made by Coast Line) was a fair price and that the plan should be approved even though it involved wiping out the investment of the stockholders (R. 359).[14] The stockholders had submitted the 1914 valuation to the Commission as showing that the price proposed under the plan was inadequate. The Commission overruled this objection, on the ground that its 19a valuation had no necessary relation to the market or exchange value of the road. (See 117 I. C. C. 181, 184–187.)

Although the appellant acquired the road without provision for the stockholders and on the theory that the 1914 valuation had no bearing on a fair price for the road, appellant now seeks to employ

[14] The representative of the reorganization committee stated to the Commission (R. 359):

> One of the principal things that the Commission perhaps will consider is the fairness of that price of $8,500,000. The only real point the stockholders have made is that that is a ridiculous price.
>
> The first point bearing on the price: This price does not mean any valuation for rate-making purposes, any capitalization, anything like that. It must mean a price that somebody is willing to pay for the property; and of course the best evidence of what a sale price is is what somebody is willing to pay for it.

the same valuation in determining its fair market price, despite the absence of evidence that the road could have been sold at anything near the 1914 valuation. We think that appellant's contention is sufficiently answered in the Commission's report (R. 59–60):

> Clearly, the only pertinent value is that for purposes of sale or exchange. Cost of reproduction is to be given little, if any, weight in determining such value in the absence of evidence that a reasonably prudent man would purchase or undertake the construction of the properties at such a figure.
>
> * * * * *
>
> It is apparent from the qualification stated in connection with our determination of the value for rate-making purposes of the properties in question, that such valuation was in no sense an expression of market or exchange value [75 I. C. C. 645, 665, et seq.]. In any event, such prima facie effect as may be accorded that finding by section 19a (i) of the Interstate Commerce Act is overcome by substantial and convincing evidence that the market or fair cash value of the properties was much less as of January 1, 1927.

The price for which the road was sold, under the circumstances of this case, is persuasive evidence of its market value. That price was $9,428,713.76. It was the best price that could be obtained after every reasonable effort had been made to dispose of it (R. 47, 255). For years the road had been oper-

ated at a deficit (R. 41; 117 I. C. C. 181, 185). Because of its lack of traffic it could not survive as an independent carrier, and the bondholders had even considered scrapping the road (*supra*, p. 6). Even in 1926, when the earnings of the road reached the highest point since 1917, the net railway operating income was sufficient to yield a 5% return on a capital of only $3,000,000 (R. 48, 289–290). There was little prospect of increased earnings in the future (*supra*, p. 6).

The previous history of the road made it extremely unattractive to a purchaser. A prior reorganization in 1915 followed a receivership extending back to 1909 (*supra*, p. 5). In this reorganization, $35,000,000 in stock and $14,500,000 in bonds had been wiped out and the actual investment made in the road at that time was only $12,000,000 (*supra*, p. 5). The road had been unable to provide a return even on this investment, and in 1921 it was again in receivership, from which it did not emerge until appellant acquired the road under the 1926 reorganization (*supra*, p. 6). After 1922, neither the stockholders nor the bondholders of appellant's predecessor had received any income on their investment (*supra*, pp. 5–6).

In the 1926 reorganization the bondholders were willing to accept for their bonds 60% in preferred stock and as this percentage was reckoned on the principal amount of the bonds without provision for accrued interest, the bondholders were in effect scaling down their investment approximately 50%

(Ex-R. 168). No provision was made for the stockholders. At the foreclosure sale the only bid made was the reorganization committee's bid of $4,500,000 (*supra*, p. 8). By the payment of approximately $4,200,000 and the guarantee of the preferred stock, Coast Line was able to acquire control of the road. It is clear that Coast Line could have acquired the complete ownership of the road by the payment of $9,428,713.76 in cash. This sum represents the total investment made in the road in the 1926 reorganization. No reason appears why the fair market price of the road at this time should be deemed to exceed that amount.[15]

Appellants contend that the Commission did not give proper consideration to the peculiar value of the road to Coast Line as a means of rounding out its system. The Commission gave ample consideration to this factor. It stated (R. 60):

> As an independently operated railroad, the market value of the properties of the Coast Company, as of January 1, 1927, was little more than nominal and it does not appear that the earning power thereof in the hands of the Coast Line Company could have been substantially increased except at the expense of other lines of the latter. In fact, the conclusion is unavoidable that if their continued operation had been reason-

[15] It is to be noted that the appellant has paid no dividends on either class of stock (R. 212) and Coast Line has been required to pay the preferred dividends in accordance with the guarantees (R. 165–166).

ably assured the properties would have yielded more to the Coast Line Company as a connection than as a part of its own system. Under these circumstances the acquisition of control of the properties at an outlay even approaching cost of reproduction would almost inevitably have proved to be burdensome. It is apparent that the preservation of existing traffic with the possibility of future increase constituted the most important consideration to the Coast Line Company. While the closing of the gap in its system was undoubtedly a matter of some importance, the fact remains that the Coast Line Company had been faced with that necessity for many years. On the other hand, abandonment of operation of the properties in question was a matter of increasing imminence.

If the Commission's finding of the fair cash value of the road is supported by substantial evidence, it is binding upon the courts, as the court below held. The Commission's report contains a thorough analysis of the evidence bearing upon the fair cash value of the road, and the Commission's finding was clearly supported by substantial evidence.

Appellant also asserts that the action of the Commission constitutes a denial of due process, because it may result in an improper rate base or an inadequate depreciation allowable for rate-making purposes, and because it will hamper appellant in making future issues of securities. Such a contention

ignores "the fact that the order is one touching accounting merely" as this Court pointed out in *Norfolk & Western Ry. Co.* v. *United States*, 287 U. S. 134, 141–142, where similar claims were rejected by this Court.

CONCLUSION

It is respectfully submitted that the decree in the District Court should be affirmed.

STANLEY REED,
Solicitor General.
JOHN DICKINSON,
Assistant Attorney General.
M. S. HUBERMAN,
CARL MCFARLAND,
Special Assistants to the Attorney General.
DANIEL W. KNOWLTON,
Chief Counsel,
Interstate Commerce Commission.
NELSON THOMAS,
Attorney, Interstate Commerce Commission.

APPENDIX

The Interstate Commerce Act provides in part:

Section 1. (18) After ninety days after this paragraph takes effect no carrier by railroad subject to this Act shall undertake the extension of its line of railroad, or the construction of a new line of railroad, or shall acquire or operate any line of railroad, or extension thereof, or shall engage in transportation under this Act over or by means of such additional or extended line of railroad, unless and until there shall first have been obtained from the Commission a certificate that the present or future public convenience and necessity require, or will require, the construction, or operation, or construction and operation, of such additional or extended line of railroad, and no carrier by railroad subject to this Act shall abandon all or any portion of a line of railroad, or the operation thereof, unless and until there shall first have been obtained from the Commission a certificate that the present or future public convenience and necessity permit of such abandonment.

(20) The Commission shall have power to issue such certificate as prayed for, or to refuse to issue it, or to issue it for a portion or portions of a line of railroad, or extension thereof, described in the application, or for the partial exercise only of such right or privilege, and may attach to the issuance of the certificate such terms and conditions as

in its judgment the public convenience and necessity may require. From and after issuance of such certificate, and not before, the carrier by railroad may, without securing approval other than such certificate, comply with the terms and conditions contained in or attached to the issuance of such certificate and proceed with the construction, operation, or abandonment covered thereby. * * *

(C. 91, 41 Stat. 477, 478; U. S. C., Title 49, secs. 1 (18) (20).)

Section 19a. (i) If notice of protest is filed the commission shall fix a time for hearing the same and shall proceed as promptly as may be to hear and consider any matter relative and material thereto which may be presented in support of any such protest so filed as aforesaid. If after hearing any protest of such tentative valuation under the provisions of this Act the commission shall be of the opinion that its valuation should not become final, it shall make such changes as may be necessary and shall issue an order making such corrected tentative valuation final as of the date thereof. All final valuations by the commission and the classification thereof shall be published and shall be prima facie evidence of the value of the property in all proceedings under the Act to regulate commerce as of the date of the fixing thereof, and in all judicial proceedings, for the enforcement of the Act approved February fourth, eighteen hundred and eighty-seven, commonly known as "the Act to regulate commerce", and the various Acts amendatory thereof, and in all judicial proceedings brought to enjoin, set aside, annul, or suspend, in whole or in part, any order of the Interstate Commerce Commission

(c. 92, 37 Stat. 703; c. 91, 41 Stat. 493; U. S. C., Title 49, sec. 19a (i)).

Section 20. (1) That the Commission is hereby authorized to require annual reports from all common carriers subject to the provisions of this Act and from the owners of all railroads engaged in interstate commerce as defined in this Act, to prescribe the manner in which such reports shall be made, and to require from such carriers specific answers to all questions upon which the Commission may need information. Such annual reports shall show in detail the amount of capital stock issued, the amounts paid therefor, and the manner of payment for the same; the dividends paid, the surplus fund, if any, and the number of stockholders; the funded and floating debts and the interest paid thereon; the cost and value of the carrier's property, franchises, and equipments; the number of employees and the salaries paid each class; the accidents to passengers, employees, and other persons, and the causes thereof; the amounts expended for improvements each year, how expended, and the character of such improvements; the earnings and receipts from each branch of business and from all sources; the operating and other expenses; the balances of profit and loss; and a complete exhibit of the financial operations of the carrier each year, including an annual balance sheet. Such reports shall also contain such information in relation to rates or regulations concerning fares or freights, or agreements, arrangements, or contracts affecting the same as the Commission may require; and the Commission may, in its discretion, for the purpose of enabling it the better to carry out the purposes of this Act, prescribe a period of time

within which all common carriers subject to the provisions of this Act shall have, as near as may be, a uniform system of accounts, and the manner in which such accounts shall be kept (c. 104, 24 Stat. 386; c. 3591, 34 Stat. 593; U. S. C., Title 49, sec. 20).

(5) The Commission may, in its discretion, prescribe the forms of any and all accounts, records, and memoranda to be kept by carriers subject to the provisions of this Act, including the accounts, records, and memoranda of the movement of traffic, as well as of the receipts and expenditures of moneys. * * * The commission shall at all times have access to all accounts, records, and memoranda, including all documents, papers, and correspondence now or hereafter existing, and kept or required to be kept by carriers subject to this Act, and the provisions of this section respecting the preservation and destruction of books, papers, and documents shall apply thereto, and it shall be unlawful for such carriers to keep any other accounts, records, or memoranda than those prescribed or approved by the Commission, and it may employ special agents or examiners, who shall have authority, under the order of the Commission, to inspect and examine any and all accounts, records, and memoranda, including all documents, papers, and correspondence now or hereafter existing, and kept or required to be kept by such carriers. * * *.

(6) In case of failure or refusal on the part of any such carrier, receiver, or trustee to keep such accounts, records, and memoranda on the books and in the manner prescribed by the Commission, or to submit such accounts, records, and memoranda as are kept to the inspection of the Commis-

sion, or any of its authorized agents or examiners, such carrier, receiver, or trustee shall forfeit to the United States the sum of five hundred dollars for each such offense and for each and every day of the continuance of such offense, such forfeitures to be recoverable in the same manner as other forfeitures provided for in this Act (C. 3591, 34 Stat. 594; c. 91, 41 Stat. 493, 494; U. S. C., Title 49, secs. 20 (5), (6)).

Section 20a. (2) From and after one hundred and twenty days after this section takes effect it shall be unlawful for any carrier to issue any share of capital stock or any bond or other evidence of interest in or indebtedness of the carrier (hereinafter in this section collectively termed "securities") or to assume any obligation or liability as lessor, lessee, guarantor, indorser, surety, or otherwise, in respect of the securities of any other person, natural or artificial, even though permitted by the authority creating the carrier corporation, unless and until, and then only to the extent that, upon application by the carrier, and after investigation by the Commission of the purposes and uses of the proposed issue and the proceeds thereof, or of the proposed assumption of obligation or liability in respect of the securities of any other person, natural or artificial, the Commission by order authorizes such issue or assumption. The Commission shall make such order only if it finds that such issue or assumption: (a) is for some lawful object within its corporate purposes, and compatible with the public interest, which is necessary or appropriate for or consistent with the proper performance by the carrier of service to the public as a common carrier, and which will not impair its ability to per-

form that service, and (b) is reasonably necessary and appropriate for such purpose.

(3) The Commission shall have power by its order to grant or deny the application as made, or to grant it in part and deny it in part, or to grant it with such modifications and upon such terms and conditions as the Commission may deem necessary or appropriate in the premises, and may from time to time, for good cause shown, make such supplemental orders in the premises as it may deem necessary or appropriate, and may by any such supplemental order modify the provisions of any previous order as to the particular purposes, uses, and extent to which, or the conditions under which, any securities so theretofore authorized or the proceeds thereof may be applied, subject always to the requirements of the foregoing paragraph (2) (C. 91, 41 Stat. 494, 495; U. S. C., Title 49, Sec. 20a (2), (3)).

U. S. GOVERNMENT PRINTING OFFICE: 1933

pp. 1-2

SUPREME COURT OF THE UNITED STATES.

No. 9.—October Term, 1935.

Atlanta, Birmingham & Coast R. R. Co., Appellant, vs. United States, et al. } On appeal from the District Court of the United States for the Northern District of Georgia.

[November 11, 1935.]

Mr. Justice Brandeis delivered the opinion of the Court.

This suit, under the Urgent Deficiencies Act, October 22, 1913, c. 32, 38 Stat. 208, 219, was brought in August, 1934, by the Atlanta, Birmingham & Coast Railroad Company, in the federal court for northern Georgia, to enjoin and annul an order of the Interstate Commerce Commission dated July 9, 1934, concerning accounting. *Accounting for Capital Items (In re Atlantic Coast Line R. R. and Atlanta, Birmingham & Coast R. R.)* 201 I. C. C. 645. The United States was named as defendant; and the Commission intervened. The defendants answered. The District Court dismissed the bill. The case is here on appeal.

The plaintiff is the company formed to take over, under an order of the Commission dated December 21, 1926, the properties of the Atlanta, Birmingham & Atlantic Railway, upon its reorganization. *Reorganization and Control of Atlanta, Birmingham & Atlantic Ry.*, 117 I. C. C. 181, 439. That order authorized the new company to issue for the properties $5,180,300 in preferred stock and 150,000 shares of no-par common stock; and authorized the Atlantic Coast Line, in consideration of the transfer to it of all the common stock, to guarantee 5 per cent dividends on the preferred and to agree to extinguish all prior liens on the property, which aggregated $4,248,413.76. See *United States* v. *Atlanta, Birmingham & Coast R. R.*, 282 U. S. 522,

The accounting rules promulgated by the Commission July 1, 1914, pursuant to Sec. 20 of the Interstate Commerce Act, provide generally that the investment account shall show the "actual money costs" to the "accounting carrier"; and specifically as to Account 41, "Cost of Road Purchased":

"This account shall include the cash cost of any road or portion thereof purchased. . . . Where the consideration given for the

property purchased is other than cash, such consideration shall be valued on a current cash basis."

In opening its books of account as of January 1, 1927, the company contended that the value of "Road and Equipment" must be ascertained in the usual manner; and that the value should be entered at $24,010,135.47, which amount was (with net additions made thereafter) the final single sum value of the properties as of June 30, 1914, found by the Commission in its report made in the Valuation Proceeding (75 I. C. C. 645) in 1923; and it presented to the Commission the following balance sheet:

Assets:	
Account 701—Road and Equipment	$24,010,135.47
Other Assets	2,698,817.73
Total	$26,708,953.20
Liabilities:	
Account 751—Capital stock account:	
Preferred stock	$5,180,300.00
Common stock	21,528,653.20
Total	$26,708,953.20

The Commission refused to approve the balance sheet proposed. *Reorganization and Control of Atlanta, Birmingham & Atlantic Ry.*, 158 I. C. C. 6. It insisted that the item "Road and Equipment" be reduced to $6,729,896.03 and that the item "Common Stock" be reduced to $4,248,413.76; and it held that these reductions were required by the following condition incorporated in the order of December 21, 1926, which authorized the issue of the stock.

"*Provided, however,* and authority to issue said stock is granted upon the express condition, that, for the purposes of the accounting as provided in the classification of investment in road and equipment in the text of account 41, 'Cost of road purchased', the cash value of the preferred stock issued must, in stating the transactions in the accounts, be reckoned on a basis not in excess of its par value; and that the cash value of the common stock must be reckoned on a basis not in excess of the amount received therefor."

The company then brought the suit described in *United States* v. *Atlantic, Birmingham and Coast R. R.*, 282 U. S. 522. The District Court sustained in that case the plaintiff's claim; but we held that its decree must be reversed and the bill dismissed for

lack of jurisdiction, since no order requiring the accounting had been entered by the Commission.[1]

Thereafter, on March 26, 1932, the Commission instituted, of its own motion, an enquiry into the methods to be employed by the company in accounting for its liability for capital stock and for its investment in road and equipment. The company renewed the contentions theretofore made by it. Much evidence bearing upon the value of the properties was introduced both by it and by the Commission. On June 9, 1934, the Commission entered the order here under review, accompanied by an elaborate report. It adhered to the view that the condition contained in the order of December 21, 1926, required that the common stock liability be limited to $4,248,413.76; and the value of "Road and Equipment" be set at $6,729,896.03. But it nevertheless made a valuation of the properties based on the evidence introduced; and it added an independent ground for its decision: that, upon valuing the properties, it found that the market or fair cash value of the properties in question did not exceed the sum of $9,428,713.76, as of January 1, 1927; that sum being equal to the par value of the preferred ($5,180,300) and $4,248,413.76. The order entered required the company to state its accounts in accordance with the above findings.

The plaintiff then brought this suit, claiming that the valuation thus made by the Commission is arbitrary, unreasonable, unsupported by the evidence, and contrary to the evidence; and that it is void, among other reasons, (*a*) because the Commission's valuation ignores the elements of value of the property for rate-making purposes; (*b*) that it ignores the reproduction value of the properties; and (*c*) that it violates paragraph 5 (1) of Section 19a of the Act to Regulate Commerce as amended, which declares that "all final valuations by the Commission . . . shall be prima facie evidence of the value of the property in all proceedings under the Act."

The pleadings, with exhibits annexed, occupy 155 pages of the printed record in this Court; the narrative statement of the evidence 154 pages; and there are 15 other exhibits, most of them extensive. Besides, there is a stipulation of counsel by which reference may be made to much other evidence, including that in various proceedings before the Commission and in the federal courts concerning

[1] In that case, the applicable statutes, and the Commission's rules governing the accounting involved, are set forth in detail.

the properties now vested in the company and its relations to the Atlantic Coast Line.[3]

The District Court, in dismissing the bill, declared that it was unnecessary to pass upon the soundness of the ground originally taken by the Commission, since, on the evidence in the proceeding under review, it had made a valuation of the properties as of January 1, 1927; had made that valuation an independent ground of its decision and order; and had appraised the properties "at such a value as that subtraction of the par of the preferred stock gives the same figures for the common stock as were reached originally by the Commission." The Court added: "We do not discover any breach of law in arriving at the value. As a finding of fact it is binding in this court. In either view of the transaction of reorganization, the figure set up by the Commission in the attacked order is unassailable." We agree with the District Court.

This Court is without power to weigh the evidence. *Virginian Ry.* v. *United States*, 272 U. S. 658, 665. The report of the Commission (201 I. C. C. 645-671) makes it clear that there was ample evidence to support its finding and order. It appeared, among other things, that the railroad had been an enterprise peculiarly disastrous to investors; that for the period from 1916 to 1926 the operating expenses had largely exceeded the operating revenues; that the net railway operating income for the year 1926 was the highest since 1917; and that these earnings, if capitalized at 5 per cent, would indicate a value of only $2,908,800. The Commission concluded that "an immediate measure of value of the non-par stock would be the amount contemporaneously paid and agreed to be paid for it by the Coast Line Company" (201 I. C. C. 668). In reaching its conclusion, it considered the report filed in 1923 in the Valuation Proceeding, and also the evidence as to the cost of reproduction, and said: "Clearly, the only pertinent value is that for purposes of sale or exchange. Cost of reproduction is to be given little, if any, weight in determining such value, in the absence of evidence that a reasonably prudent man would purchase or undertake the construction of the properties at such a figure."

Affirmed.

---

[3]Among these were Atlanta, Birmingham & Atlantic R. R. (Valuation Docket No. 1), 75 I. C. C. 645; Reorganization and Control of Atlanta, Birmingham & Atlantic Ry., 117 I. C. C. 181, 439; 158 I. C. C. 6; Atlanta, B. & C. R. Co. v. United States, 28 F. (2d) 885; 37 F. (2d) 401; Consolidation of Railroads, 63 I. C. C. 455; Finance Docket No. 5454, I. C. C., Reorganization and Control of Atlanta, Birmingham & Atlantic Ry., decided April 9, 1928. (Not reported.)